

PROB 12B
(7/93)FILED
Clerk
District Court

JUN 22 2006

United States District Court

for

*the Northern Mariana Islands*For The Northern Mariana Islands
By _____
(Deputy Clerk)**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender***(Probation Form 49, Waiver of Hearings is Attached)*Name of Offender: **Edward Mendiola Fleming**Case Number: **CR 04-00022-001**Name of Sentencing Judicial: **Alex R. Munson**Date of Original Sentence: **April 5, 2006**Original Offense: **Attempted Alien Smuggling for Financial Gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(i)**

Original Sentence: Six and a half months incarceration followed by a two year term of supervised release with conditions to include: serve six and a half months home confinement under the home detention component and abide by all the requirements of the program which will include electronic monitoring, and pay all or part of the costs of the program based on ability to pay as determined by the U.S. Probation Office; not commit another federal, state, or local crime; not unlawfully possess a controlled substance and refrain from any unlawful use of a controlled substance; submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer; be prohibited from possessing a firearm, destructive device, or any other dangerous weapon or have such weapon at her residence; participate in a program approved by the U.S. Probation for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs; make co-payment for the program at a rate to be determined by the U.S. Probation Office; seek and maintain gainful employment; complete 200 hours of community service under the direction of the U.S.

Type of: **Supervised Release** Date Supervision Commenced: **April 27, 2006**Assistant U.S. Attorney: **Jamie D. Bowers**Defense Attorney: **Bruce Berline****PETITIONING THE COURT**☐ To extend the term of supervision for _____ years, for a total term of _____ years.☒ To modify the conditions of supervision as follows:**CAUSE**

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.
- The defendant participate in a treatment program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs. The defendant shall also make co-payment for the program at a rate to be determined by the U.S. Probation Office.
- That the defendant shall perform an additional 100 hours of community service under the direction of the U. S. Probation Office.

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On September 2, 2005, the Ninth Circuit, in United States v. Stephens, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. § 3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Edward Fleming's history of drug use, and the drug detection period of his drug of choice. As methamphetamine is considered one of the drugs of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender. To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Fleming's mandatory condition to set the maximum number of tests he must submit.

Further, on May 1, 2006, Mr. Fleming submitted to drug testing at Marianas Psychiatric Services administered by Dr. Judith Avery, and tested presumptive positive for methamphetamine. The specimen was packaged and sent to the laboratory for confirmation testing, and on May 25, 2006, the lab returned a confirmed positive for use of methamphetamine. On May 25, 2006, Mr. Fleming was confronted by the probation officer about his use of methamphetamine. Mr. Fleming admitted to smoking "ice" on April 28, 2006 and signed an Admission of Drug Use form. Mr. Fleming consented to modifying his conditions of supervised release to address the issue of his illegal drug use, and includes the following:

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.
- The defendant participate in a treatment program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs. The defendant shall also make co-payment for the program at a rate to be determined by the U.S. Probation Office".
- The defendant shall perform an additional 100 hours of community service under the direction of the U.S. Probation Office".

Attached is a Probation Form 49 "Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with Mr. Fleming's consent.

Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer
Supervision Unit Leader

Date: 6-21-06

Respectfully submitted,

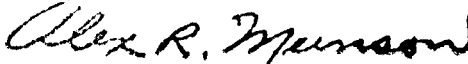
by: 
MARGARITA WONENBERG

U.S. Probation Officer

Date: 6-21-06

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above
- ☒ The Modification of Conditions as Noted Above
- ☐ Other


Signature of Judicial Officer

JUN 22 2006

Date

PROB 49
(3/89)

United States District Court

for

District of Northern Mariana Islands

**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

That the defendant shall participate in a treatment program approved by the U.S. Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs. The defendant shall also make co-payment for the program at a rate to be determined by the U.S. Probation Office; and

That the defendant shall perform an additional 100 hours of community service under the direction of the United States Probation Office

Witness: Margarita D.L.G. Wonenberg Signed: Edward M. Fleming
U.S. Probation Officer Probationer or Supervised Releasee

6/12/06
Date